IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41352
(Summary Calendar)

DEON MEANS,

Plaintiff-Appellant,

versus

R. J. PARKER, Warden, ET AL.,

Defendants-Appellees.

Appeal from United States District Court
for the Eastern District of Texas
(6:94-CV-41)

(May 31, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[*]

Pro se and in forma pauperis prisoner Deon Means filed this civil rights suit against prison Officers Huffman and Wise and the warden. In this suit, he alleged that Huffman struck him repeatedly in the face while Wise, who was Huffman's supervisor, stood by without intervening. After holding two evidentiary hearings, the magistrate judge issue a report and recommendation that the suit be dismissed. The district court adopted the report

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

and recommendation of the district court and dismissed the suit with prejudice. Mason appealed alleging that the district court erred in dismissing his claim.

A complaint filed in forma pauperis can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is "`frivolous where it lacks an arguable basis either in law or in fact.'" Denton v. Hernandez, ___U.S.___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (citing Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 1831, 104 L.Ed.2d 338 (1989)). We review the district court judgment for an abuse of discretion. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). In excessive use of force suits against convicted prisoners, the Supreme Court has emphasized that the core judicial inquiry is "whether the force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, ___ U.S. ___, 112 S.Ct. 995, 999 (1992). In determining whether the use of force was wanton and unnecessary, it may also be proper to evaluate the need for application of force, the relationship between that need and the amount of force used, the threat "reasonably perceived by the responsible officials," and "any efforts made to temper the severity of a forceful response." Id.

Officer Huffman was escorting Means to the infirmary when he broke from Officer Huffman's grasp and started running away. Means was classified as an assaultive prisoner, meaning that he had a history of assaults. Prison regulations required Officer Huffman to regain immediate control over the prisoner. Thus, Officer

Huffman chased Means down and immediately pulled him down to the prison floor. It was at this point, according to Means and two other inmates, that Officer Huffman began to hit Means until stopped by Officer Wise.

Immediately afterwards, Means was placed in leg irons and taken to the infirmary to be examined by a nurse. The nurse found an abrasion caused by another prisoner before the incident and there were teeth marks and discoloration on his lower lip. The nurse found no swelling in his face where he was supposedly beaten and X-rays did not reveal any fractures. Means himself only complained of a headache and a pain in his neck caused by a migraine.

The testimony at the hearing revealed that the force used on Means was an attempt to maintain and restore order and discipline. See Hudson, 112 S.Ct. at 999. Although Means claims that he was beaten by Officer Huffman, the physical examination bely that contention completely. We find no error in the district court's judgment. DISMISSED.